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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 888

STEPHEN L. KREZNAR and NOVERA H. SPECTOR,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The order of the Court of Claims (Pet. App. A) was entered without opinion.

JURISDICTION

The order of the Court of Claims was entered on June 22, 1962. A timely motion for reargument and reconsideration was denied on October 3, 1962. On December 28, 1962, Mr. Justice Brennan entered

an order extending the time to file the petition for certiorari until March 1, 1963, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. § 1255(1).

QUESTION PRESENTED

Whether the Court of Claims erred in suspending proceedings in a suit for a money judgment arising out of an adverse determination relating to security clearance, pending pursuit by petitioner of his administrative remedies before the Department of Defense.

REGULATIONS INVOLVED

The pertinent parts of the regulations of the Department of Defense are set forth in the Appendix to the Government's brief in the companion case, *Greene* v. *United States*, No. 887, this Term.

STATEMENT

1. *Petitioner Kreznar.* Prior to 1956, Kreznar was employed by the Wisconsin Telephone Company of Milwaukee, Wisconsin (R. 2). On or about September 1, 1950, that company entered into a "General Contract for Communication Facilities and Services" with the Department of the Army, which was later supplemented by a security agreement (R. 2). The latter agreement (Section I-B) provided that, upon written application of the contractor, the Government would designate employees of the contractor who could have access to classified information.

In September 1954, Wisconsin Telephone sought approval for Kreznar to have access to classified information. Kreznar, at that time, held no clearance and was one of a group of 15 PBX (Private Branch Exchange) Installers for whom the company sought clearance. Prior to that time, his work had not required it.

The application was processed under Department of Defense Directive 5220.6 of February 2, 1955. An initial, non-final determination was made by the Screening Board that he should not be granted access to classified information (R. 1-2). By letter dated June 16, 1956, he was notified that "any existing clearance you may have for access to Army, Navy, or Air Force classified defense information has been suspended" (R. 1-2). This letter also set forth the reasons why access was not being granted to him and advised him of his right to a hearing.

Kreznar requested and received a hearing before the New York Industrial Personnel Security Hearing Board (R. 2). After considering the case, the Board found that the allegations of the Screening Board were meritorious and ruled that the granting to plaintiff of access to classified information was not clearly consistent with the interests of national security (R. 2). By letter dated September 7, 1956, Kreznar was so notified. Upon review, this action was affirmed (R. 2).

On or about November 21, 1956, plaintiff filed an action in the United States District Court for the District of Columbia, seeking a declaratory judgment that the denial of his security clearance was in-

valid (R. 2-3). On November 6, 1959, following the decision of this Court in *Greene* v. *McElroy*, 360 U.S. 474, the district court entered an order vacating the action of the New York Industrial Personnel Security Hearing Board and orders based thereon (R. 3).

By letter dated November 6, 1959, Kreznar made a generalized "demand" for monetary restitution under paragraph 26 of the 1955 regulation (R. 3). By letter dated November 19, 1959, he was advised, in substance, that action on the matter would have to await resolution of certain questions raised by the decision in the *Greene* case, *supra*.

2. *Petitioner Spector.* As of May 1954, Spector was employed as a machinist by the Sperry Gyroscope Company, a division of The Sperry Corporation (R. 15). The Government and Sperry had a Security Agreement identical to that applicable to Kreznar's employment. On May 7, 1954, Spector and Sperry were notified by the Inspector of Naval Materials, New York, that Spector was to be denied access to classified material, pending a decision by the Eastern Industrial Personnel Security Board (EIPSB) as to whether he should be granted access (R. 16). These letters expressly stated that this action did not preclude Spector's employment by Sperry. The applicable regulation contained similar provision.

On June 7, 1954, the Screening Division, EIPSB, notified Spector that it proposed to revoke his authorization for access to classified material, setting forth

the reasons for this action and advising him of his right to reply in writing thereto (R. 16). After Spector replied, the Screening Division on August 13, 1954, notified him that clearance for access to classified information was revoked. (R. 16). It further advised him of his right to appeal to the Appeal Division of the EIPSB and to a hearing.

Spector appealed and several hearings were held during 1955 (R. 16-17). On November 21, 1955, Spector was notified that the Appeal Division had considered his case and decided that the granting of access to classified information was not clearly consistent with the national interest (R. 17).

Spector requested review of the Board's decision. By letter dated June 20, 1956, he was advised that the decision had been reviewed by the Industrial Personnel Security Review Board and that it had sustained the prior decision (R. 17). Spector sought further review of his case and by letter dated November 20, 1956, was notified that the matter had again been examined and that the Secretary of Defense had found no basis for departing from the decision reached by the Review Board (R. 17, 26).

On November 24, 1956, Spector filed suit in the United States District Court for the District of Columbia seeking declaratory and injunctive relief (R. 17). After the filing of cross-motions for summary judgment, an order was entered on November 14, 1957, dismissing the complaint (R. 17). On July 16, 1959, the court of appeals in *Spector* v. *McElroy*, 269 F. 2d 242, reversed the judgment of the district

court, relying on *Greene* v. *McElroy*, *supra* (R. 17-18). The litigation was ultimately terminated by an order of the district court entered on November 6, 1959, by consent of the parties (R. 18). This order set aside the action of the Appeal Division of the Eastern Industrial Personnel Security Board and the Industrial Personnel Security Review Board and all orders based thereon (R. 18).

By letter dated November 6, 1959, Spector made a generalized "demand" for monetary restitution under paragraph 26 of the 1955 regulation (R. 18). By letter dated November 19, 1959, he was advised, in substance, that action on the matter could not be completed at that time, pending resolution of certain questions raised by the decision in the *Greene* case, *supra*.

3. *Proceedings in the Court of Claims.* On February 5, 1960, Kreznar and Spector filed separate petitions in the Court of Claims, seeking money damages arising out of the denial (Kreznar) and revocation (Spector) of their security clearances (R. 1, 15). On February 19, the Government filed motions to suspend consideration of petitioners' claims because of the petitioners' failure to pursue available administrative remedies before the Department of Defense. The motion was based upon letters which had been sent to petitioners by the Department of Defense on September 9, 1960. Petitioners were advised therein that under the authority of Executive Order 10865, 25 Fed. Reg. 1583, dated February 20, 1960, and the Industrial Personnel Access Authorization Review Regulation, 25 Fed. Reg. 7523, dated July

28, 1960, copies of which were attached to the letters, their cases would be processed to completion by the Department of Defense. Petitioners were further advised that when a final determination as to access authorization had been made, their claims for monetary restitution could be acted upon.

The government's motion was denied, and the government was directed to answer the petitions (R. 191). After the answers had been filed (R. 9, 23), petitioners, on March 7, 1961, filed a joint motion for summary judgment (R. 29). The government responded in both cases with alternative motions for summary judgment or suspension of proceedings (R. 82, 140). After oral argument, the Court of Claims ordered that further proceedings be suspended "pending plaintiff's pursuit and completion of administrative remedies available through the Department of Defense * * *." (R. 183). On October 3, 1962, the court below denied petitioner's joint motion for reargument and reconsideration (R. 187), and on December 5, 1962, it also denied petitioner's joint motion for leave to file for rehearing and reconsideration (R. 198).

ARGUMENT

The petition raises the same issues presented in the petition for a writ of certiorari in *Greene* v. *United States*, No. 887, October Term, 1962. Indeed, the petition is based exclusively upon the considerations set forth in the *Greene* petition. For

the reasons developed in our brief in opposition in *Greene*, this petition should likewise be denied.

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April, 1963.

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